

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

2004 OCT 14 P 3:44

OHIO NATIONAL LIFE ASSURANCE  
CORPORATION,  
Plaintiff

V.

TRICIA JEAN MURPHY, LYNN ANN  
POWERS, MARK ASHLEY WOOD, PENNY  
JEAN WOOD, and SANDRA LEE WOOD,  
Defendants

CIVIL ACTION NO.

04-40207 FDS

COMPLAINT FOR INTERPLEADER

1. This is a complaint for interpleader brought pursuant to Federal Rule of Civil Procedure 22 and 28 U.S.C. §§1335, 1397 and 2361 to require the defendants to interplead and settle among themselves their rights to the proceeds of two annuity contracts owned by the late Shirley B. Wood.

2. This Court has original jurisdiction of this matter pursuant to 28 U.S.C. §1335. Venue is appropriate in this court pursuant to 28 U.S.C. §1397 as one or more of the claimants reside in this judicial district.

PARTIES

3. The plaintiff, Ohio National Life Assurance Corporation ("Ohio National"), is an Ohio corporation with its principal place of business at One Financial Way, Cincinnati, Ohio.

4. The defendant, Tricia Jean Murphy, is an individual who, upon information and belief, resides at 46 Cutler Street, Worcester, Massachusetts.

RECEIPT # 404428  
AMOUNT \$ 150.00  
SUMMONS ISSUED ✓  
LOCAL RULE 4.1 ✓  
WAIVER FORM ✓  
MCF ISSUED ✓  
BY DPTY. CLK. S Jones  
DATE 10-14-04

5. The defendant, Lynn Ann Powers, is an individual who, upon information and belief, resides at 35 Windbrook Drive, Auburn, Massachusetts.

6. The defendant, Penny Jean Wood, is an individual who, upon information and belief, resides at 1736 Dewey Street, Apartment 2, Hollywood, Florida.

7. The defendant, Mark Ashley Wood, is an individual who, upon information and belief, resides at 117 Moreland Street, Worcester, Massachusetts.

8. The defendant, Sandra Lee Wood, is an individual who, upon information and belief, resides at 1108 East Villa Road, Phoenix, Arizona.

#### FACTS

9. The defendants are the children of Shirley B. Wood.

10. Shirley B. Wood was the owner and annuitant of Single Premium Deferred Annuity Contract No. S6624189 with a contract date of April 23, 2002, and Single Premium Deferred Annuity Contract No. S1509418 dated September 16, 2003 (the "Contracts").

11. Shirley B. Wood had designated all of the defendants as the beneficiaries of the Contracts.

12. Shirley B. Wood died on February 7, 2004.

13. On or about February 17, 2004, Ohio National received notice of Shirley B. Wood's death and that on February 6, 2004 Shirley B. Wood allegedly changed the beneficiary on both Contracts to solely Sandra Lee Wood.

14. The death benefit value of Contract No. S1509418 is \$65,620.94. The death benefit value of Contract No. S6624189 is \$24,152.18.

15. Because it had not received notice of a change in beneficiary prior to Shirley B. Wood's death, Ohio National notified the defendants on August 18, 2004 that the proceeds from

the Contracts would be distributed equally among all defendants unless written notice of a complaint was received within thirty days.

16. Sandra Lee Wood has objected to the distribution of the proceeds of the Contracts to all the defendants equally and contends the proceeds should be paid solely to her. One or more of the remaining defendants contends that the proceeds from the Contracts should be distributed equally. Thus, a dispute exists among the defendants regarding who are the beneficiaries under the Contracts and how the proceeds from the Contracts should be distributed among them.

17. The defendants have claims against Ohio National such that it may be exposed to multiple liabilities for the proceeds of the Contracts.

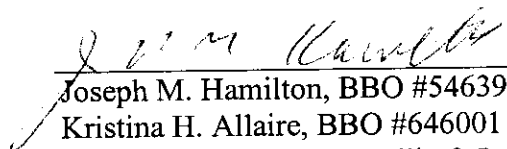
WHEREFORE, Ohio National requests that this Court grant the following relief:

- a. That a declaratory judgment be entered declaring the interest that each defendant has in the proceeds of the Contracts;
- b. That each of the defendants be restrained from instituting any action against Ohio National related to the recovery of the proceeds of the Contracts;
- c. That Ohio National be allowed to deposit the proceeds of the Contracts into this Court pending judgment;
- d. That the defendants be required to interplead and settle among themselves their rights to the proceeds of the Contracts and that Ohio National be discharged from all liability as to the recovery;
- e. That Ohio National be dismissed from this action with prejudice;
- f. That Ohio National be awarded its costs, including attorney's fees, and that this amount be deducted from the proceeds of the Contracts; and

g. For such further relief as the Court may deem appropriate.

OHIO NATIONAL LIFE ASSURANCE  
CORPORATION

By its attorneys,

  
\_\_\_\_\_  
Joseph M. Hamilton, BBO #546394

Kristina H. Allaire, BBO #646001

Mirick, O'Connell, DeMallie & Lougee, LLP

100 Front Street

Worcester, MA 01608-1477

Phone: (508) 791-8500

Fax: (508) 791-8502

Dated: 10/14/04

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Ohio National Life Assurance Corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Joseph M. Hamilton (508) 791-8500  
Kristina H. Allaire  
Mirick O'Connell  
100 Front Street, Worcester, MA 01608

## DEFENDANTS

Tricia Jean Murphy, Lynn Ann Powers, Mark  
Ashley Wood, Penny Jean Wood, and Sandra  
Lee Wood

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                                   |   | PTF                                   | DEF                        |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business in Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Judgment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

This is a complaint for interpleader brought pursuant to Federal Rule of Civil Procedure 22 and 28 U.S.C., Sections 1335, 1397 and 2361 to require the defendants to interplead and settle among themselves their rights to the proceeds of two annuity contracts owned by the late Shirley B. Wood.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ YES ☒ NO

## VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE 10/14/04 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Ohio National Life Assurance Corporation v. Tricia Jean Murphy, et al.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LIST ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1))
 

—	I.	160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT
—	II.	195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.
<u>X</u>	III.	110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
—	IV.	220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
—	V.	150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E))  
\_\_\_\_\_
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? No
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? No  
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403)  
\_\_\_\_\_
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? No
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY)? (SEE LOCAL RULE 40.1(C)) YES        OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? (SEE LOCAL RULE 40.1(D)) YES
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES Yes  
(a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? Neither
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Central
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION        OR WESTERN SECTION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Joseph M. HamiltonADDRESS Mirick O'Connell, 100 Front Street, Worcester, MA 01608TELEPHONE NO. (508) 791-8500

(COVER\_SHT-08/90)